

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

CRISTOBAL BENAVIDES,

Petitioner

v.

BRIAN WILLIAMS, *et al.*,

Respondents.

Case No.: 2:23-cv-00576-ART-VCF

**Order Screening Petition, Granting  
Motion for Counsel, Denying  
Application to Proceed *In Forma  
Pauperis* as Moot**

Cristobal Benavides has submitted a pro se 28 U.S.C. § 2254 petition for a writ of habeas corpus. (ECF No. 1-1.) He paid the filing fee; therefore his application for leave to proceed *in forma pauperis* (ECF No. 1) is denied as moot. The Court has reviewed the petition pursuant to Rule 4 of the Rules Governing Habeas Corpus Cases Under Section 2254 and directs that it be served on Respondents.

A petition for federal habeas corpus should include all claims for relief of which petitioner is aware. If Petitioner fails to include such a claim in his petition, he may be forever barred from seeking federal habeas relief upon that claim. See 28 U.S.C. §2244(b) (successive petitions). If Petitioner is aware of any claim not included in his petition, he should notify the court of that as soon as possible, perhaps by means of a motion to amend his petition to add the claim.

1 Benavides has also submitted a motion for appointment of counsel. (ECF  
2 No. 1-2.) There is no constitutional right to appointed counsel in a federal  
3 habeas corpus proceeding. *Luna v. Kernan*, 784 F.3d 640, 642 (9<sup>th</sup> Cir. 2015)  
4 (citing *Lawrence v. Florida*, 549 U.S. 327, 336–37 (2007)). Whenever the court  
5 determines that the interests of justice so require, counsel may be appointed to  
6 any financially eligible person who is seeking habeas corpus relief. 18 U.S.C. §  
7 3006A(a)(2)(B). “[T]he district court must evaluate the likelihood of success on  
8 the merits as well as the ability of the petitioner to articulate his claims pro se  
9 in light of the complexity of the legal issues involved.” *Weygandt v. Look*, 718  
10 F.2d 952, 954 (9<sup>th</sup> Cir. 1983). Here, Benavides states in his petition that a jury  
11 convicted him of sexual assault and lewdness with a child under age 14 and  
12 that he is serving an aggregate term of 55 years to life in prison. He also states  
13 that he needs a Spanish-speaking attorney to help him navigate his claim that  
14 he is actually innocent. In order to ensure due process, the Court grants  
15 Benavides’ motion for counsel.

16 It is therefore ordered that Petitioner’s application for leave to proceed *in*  
17 *forma pauperis* **(ECF No. 1) is DENIED** as moot.

18 It is further ordered that the Clerk of Court detach, file, and  
19 electronically SERVE the petition (ECF No. 1-1) on the Respondents.

20 It is further ordered that the Clerk add Aaron D. Ford, Nevada Attorney  
21 General, as counsel for Respondents and provide Respondents an electronic  
22 copy of all items previously filed in this case by regenerating the Notice of  
23 Electronic Filing to the office of the AG only.

1 It is further ordered that the Clerk detach and file the motion for  
2 appointment of counsel (ECF No. 1-2).


3 It is further ordered that Petitioner's motion for appointment of counsel  
4 is **GRANTED**.

5 It is further ordered that the Federal Public Defender for the District of  
6 Nevada ("FPD") is appointed to represent Petitioner.

7 It is further ordered that the Clerk **ELECTRONICALLY SERVE** the FPD a  
8 copy of this order, together with a copy of the petition for writ of habeas corpus  
9 (ECF No. 1-1). The FPD has **30 days** from the date of entry of this order to file a  
10 notice of appearance or to indicate to the Court its inability to represent  
11 petitioner in these proceedings.

12 It is further ordered that after counsel has appeared for Petitioner in this  
13 case, the Court will issue a scheduling order, which will, among other things,  
14 set a deadline for the filing of an amended petition.

15  
16  
17 DATED THIS 16th day of May 2023.

18   
19 ANNE R. TRAUM  
20 UNITED STATES DISTRICT JUDGE  
21  
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